

THE LEGAL ADVISER
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89

MEMORANDUM FOR MR. ALEXIS JOHNSON

FROM : L - Abram Chayes

SUBJECT: Establishment of Prohibited or Restricted Zones or Required Routes

I have been in conversation with Defense Department lawyers on this subject and we are in agreement on the following points:

1. The establishment of such zones or routes may be useful for enforcement or operational purposes. If so the Secretary of Defense has adequate authority to establish them under the President's proclamation.

2. The establishment of such zones or routes would neither enhance nor diminish our case from an international legal point of view, except in the following rather marginal respects:

(a) To the extent that ships adhere to such regulations, it could be claimed that other nations had recognized the validity of our actions. Of course, nations could and probably would preserve their position by adhering to the regulations only under protest or with the announcement that they will do so merely as a prudential matter.

(b) In general we should be able to show that our operations are limited to what is reasonably necessary to enforce the quarantine. The establishment of prohibited zones reasonably related in distance and location to Cuba might assist in making the case for reasonableness.

3. Even if we establish prohibited or restricted zones or routes, we should still try to arrange things so that the first use of force, at least so far as surface ships are concerned, follows a specific refusal to permit search rather than merely a violation of the general regulation. The rationale here also is to assist in demonstrating that our operations were limited to what is reasonably necessary to enforce the quarantine.

4. It may be that a contrary policy is warranted with respect to submarines -- i.e., use of force predicated solely on violation of prohibited zones -- because of the difficulty of direct communication with submarines. If such a course is decided upon, sufficient time should be permitted to allow for transmission of the regulation establishing the zones to operating submarines. In view of the instructions for communication with submarines issued yesterday, however, it may be that no special procedure is needed.

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